



Freedom of Information Policy

# Code of Practice for Responding to Requests for Information

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# Code of Practice for Responding to Requests for Information

## Associated Documentation:

### Sheffield Teaching Hospitals NHS Foundation Trust controlled documents:

#### Policies:

28      FOI Policy

#### Procedures

335      Procedure for the Management of Information Governance and Cyber Security  
            Serious Incidents Requiring Investigation (SIRI)

#### Codes of Practice and Guidance:

37      Code of Practice for the Management of Records

#### Legal Framework

68      Agreement for the Acceptable Use of Trust Computing Systems  
Data Protection Act 1998 (to 24th May 2018)  
General Data Protection Regulation (from 25th May 2018)  
UK Data Protection Bill 2018 (from 25th May 2018)  
Privacy and Electronic Communications Regulations 2003,  
Computer Misuse Act 1990  
Health & Social Care (Safety & Quality) Act 2015

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## Version Control

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2.0	14/07/2006	The Trust Document Imprint added to Page 2. Page 2 revised. Version number changed to 2.0	David Hoar
2.5	12/03/09	Departmental name updates. DCA and Lord Chancellor references updated to Ministry of Justice and Secretary of State for Constitutional Affairs	Peter Wilson
3.0	09/08/11	Review by IGCS, Reformat into new controlled document layout. No changes were made to the document following the review.	Peter Wilson
4.0	13/02/14	No Material Changes	Peter Wilson
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## Document Imprint

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# Code of Practice for Responding to Requests for Information

## Executive Summary

### Code of Practice for Responding to Requests for Information

#### Document Objectives

Code of Practice to enable a managed response to Freedom of Information (Fol) requests throughout the Trust, ensuring the Trust carries out its responsibilities within the Fol legislation.

#### Group/Persons Consulted:

Information Governance Committee, Freedom of Information Project Group, Informatics Directorate, Caldicott Guardian and Department of Constitutional Affairs.

#### Monitoring Arrangements and Indicators:

Issued electronically by the Controlled Documents Group. Available on Trust Intranet.

#### Training Implications

To be included as part of staff training, awareness and induction at all organisation levels. Part of the IG Training Modules available online and via OLMS and ESR.

#### Equality Impact Assessment

Completed and signed off.

#### Resource Implications

Staff familiarisation with the Policy: Training and monitoring.

#### Intended Recipients

All staff.

#### Who should:

Be **aware** of the document and where to access it.

All staff (including temporary staff, locums and those on short term contract, and letter of authority)

#### Understand the document

Senior Managers.

Have a **good working knowledge** of the document

Senior managers, Director of Informatics, staff of IGCS.

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# Code of Practice for Responding to Requests for Information

## 1. Definitions

1.1. Throughout this document the following terms are used:

- a) "The Act" means the Freedom of Information Act 2000.
- b) "Commissioner" means the Information Commissioner; the regulatory body for the Act.
- c) "DPA" means the Data Protection Act 1998, relating to the processing of personal data..
- d) "RFI" means a written request for information under the provisions of the Act.
- e) "the Trust" means the Sheffield Teaching Hospitals NHS Foundation Trust.
- f) "MOJ" means the Ministry of Justice; responsible for the Act.
- g) "IGCS" means the Department for Information Governance, Caldicott & SIRO Support.

## 2. Introduction

- 2.1. This Code of Practice<sup>1</sup> provides guidance on the handling of requests for information submitted under the Freedom of Information Act 2000 ('the Act'). It supplements the Trust's Freedom of Information Policy and a parallel Code of Practice which provides guidance on the implementation of records management in the Trust.
- 2.2. The Act requires that institutions implement and maintain an effective system for responding to requests for information. The Trust is such a public authority under the Act. The Trust's Policy on Freedom of Information is that it will comply fully with the Act and it will place in the public domain as much information about its activities as is practicable, and subject to the exemptions permitted under the Act will make all other information available on request. In particular, it will conform to the Secretary of State for Justice & Constitutional Affairs' Code of Practice on the discharge of public authorities' functions made under Section 45 of the Act.
- 2.3. That Code of Practice requires the Trust to:
  - a. Provide advice and assistance to persons making requests for information.
  - b. Deal with all requests within 20 working days of receipt of request, after receipt of any fees in accordance with the Secretary of State for Constitutional Affairs' Fee Regulations, and justify any refusal of a request.
  - c. Assist a person making a request, when the information they are seeking is held by another public authority.
  - d. Consult with third parties before releasing any data that may affect them
  - e. Consult with third parties where it might enable the Trust in determining if and how the information should be released.
  - f. Have a complaints procedure to deal with any complaints made about its Publication Scheme, or the handling or result of an individual application.
- 2.4. The Trust has a publication scheme [www.sheffield.nhs.uk/sth/index.htm](http://www.sheffield.nhs.uk/sth/index.htm) which details the classes of information that it has chosen to make publicly available, together with details of how the information can be obtained and any associated cost.
- 2.5. The Trust regularly receives requests for information as part of the normal course of business. Members of staff will be expected to continue dealing with these requests as normal.
- 2.6. This Code of Practice relates solely to requests for information where a member of Trust is unable or unwilling to respond to the request or the request is explicitly made under the Act and the information requested is not covered in the Trust's Publication Scheme. All requests of this nature must be passed to the Department for Information Governance, Caldicott & SIRO Support (IGCS) as a matter of urgency. The IGCS will then consider the request and work with the appropriate directorates and departments to locate the information. The IGCS will also consider any exemptions that might apply to releasing the information and determine any associated fees.

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<sup>1</sup> Ministry of Justice's Code of Practice on Responding to Requests can be found at:

<http://www.justice.gov.uk/guidance/foi-code-of-practice.htm>

# Code of Practice for Responding to Requests for Information

## 3. Data Protection Act 1998

- 3.1. The provisions of the DPA always take precedence over those of the Freedom of Information Act 2000. Personal information must always be obtained, processed, stored and disclosed in accordance with the DPA, even where a request for information has been made under the provisions of the Freedom of Information Act.

## 4. Responsibilities

- 4.1. Director of Service Development. The Director of Service Development has executive responsibility for the overall management of the system and procedures.
- 4.2. The Department for Information Governance & Caldicott Support (IGCS) The IGCS is responsible for:
- Working with directorates and departments to ensure they are aware of their responsibilities under the Act.
  - Ensuring all requests under the Act are handled in accordance with the Trust's Freedom of Information Policy and Codes of Practice.
  - Assisting and advising individuals and organisations making requests under the Act.
  - Ensuring that, in considering requests for information and accepting or refusing them, the public interest is properly assessed and exemptions are properly applied.
  - Ensuring information is released within the timescales specified within this Code of Practice (see paragraph 5.6)
  - Maintaining the Publication Scheme.
  - Keeping the Trust's Freedom of Information Policy and Codes of Practice under review.
  - Retrieval of information in long-term storage.
  - Liaising with directorates and departments to retrieve information held by them locally.
  - Maintaining the Freedom of Information databases.
- 4.3. **Directorates and Departments.** Directorates and Departments are responsible for:
- Ensuring that they comply with these procedures and that local arrangements are in place to this end.
  - Appointing Directorate and Departmental Records Managers.
- 4.4. **Directorate and Departmental Records Managers.** Directorate and Departmental Records Managers are responsible for:
- Ensuring that all requests for information are passed on promptly to the IGCS and systems are in place for checking and, if necessary, redirecting the post and electronic mail of staff absent from Trust.
  - Assisting the IGCS in locating and retrieving information.
  - Assisting the IGCS in drafting the Trust's response to a request and preparing the information in a suitable form, electronic or physical, for disclosure to the applicant.
  - Informing the IGCS of changes to any information covered by the Publication Scheme, including changes to URL addresses.
- 4.5. **Trust Staff.** Individual Trust Staff are responsible for:
- Knowing their responsibilities under the Act
  - Ensuring that, when they are absent from Trust for any reason, arrangements are in place for their post and electronic mail to be checked or redirected to someone who can deal with it promptly.
  - Responding to requests for information and, if they are unwilling or unable to do so in their normal course of work, referring the request to the Directorate and Departmental Records Manager.
  - Seeking advice when they are uncertain on how to respond to a request.

# Code of Practice for Responding to Requests for Information

## 5. Procedure for Responding to Requests for Information (RFI's) under the Act

### 5.1. General.

All RFI's under the Act must be directed to the IGCS in the first instance, and they will then determine how each request is handled. This is in line with current procedures for managing full subject access requests under the DPA, where Directorates and Departments assist in retrieving information and supplying it to the IGCS. The IGCS will then make the Trust's formal response to such requests. [A flowchart, outlining the process for dealing with requests, is shown in Appendix A.]

### 5.2. Initial Request – Assisting the Applicant.

- a. There is an obligation on the Trust to provide advice and assistance to those making requests under the Act. The duty on the Trust is to provide advice and assistance "so far as it would be reasonable to expect [it] to do so".
- b. Not all potential applicants will be aware of the Act, or Regulations made under it. Trust staff receiving requests should draw these to the attention of potential applicants who appear to be unaware of them or refer to the Department for Information Governance, Caldicott & SIRO Support.
- c. A request for information under the Act must be made in writing (which can include e-mail). Where a person is unable to submit a written request, they should be referred to Department for Information Governance, Caldicott & SIRO Support.
- d. A request for environmental information may be made verbally as well as in writing or by e-mail. In such cases staff should refer the requestor to their manager.
- e. Further details on assisting applicants and dealing with requests can be found in Appendix A.

### 5.3. Action by the Department for Information Governance, Caldicott & SIRO Support.

- a. The IGCS is responsible for assisting applicants requesting information under the Act and ensuring the requests are processed both in accordance with the Act and the Trust's Policy and Codes of Practice. Further details can be found in Appendix A.
- b. Procedure for Identifying where information is held
  - I. Documents stored electronically will be accessed via the information owner.
  - II. The IGCS will then be responsible for using the information and fulfilling the request.
- c. Identify with the information owner any information located in long-term storage.
- d. When the Trust does not hold the information. There may be circumstances when the Trust does not hold some or all of the information requested by the applicant. In this case the Trust will provide what it does hold but will also:
  - I. Redirect the applicant to enable them to pursue their request where it is believed another Public Authority holds some or all of the information,
  - II. Provide advice and assistance to the applicant to enable them to pursue their request where the Trust does not know who owns some or all of the information.

### 5.4. Action by Directorates and Departments.

The Directorate or Department will:

- a. Assist the IGCS to locate and retrieve the information requested.
- b. Advise the Department for Information Governance, Caldicott & SIRO Support if they believe there are any reasons why the information should be withheld.



## Code of Practice for Responding to Requests for Information

### 5.5. Response by Department for Information Governance, Caldicott & SIRO Support.

The IGCS will respond to all requests and release information having first:

- a. Ensured that information released complies with the DPA 1998.
- b. Considered whether the information requested or any part thereof is subject to an exemption under the Act.
- c. Consulted with third parties, where appropriate. Further details can be found in Appendix B.
- d. Where appropriate inform the Press Office of any information that is being released.

### 5.6. Timescale for Responding to Requests.

- a. The Act requires that replies to requests for information be made within 20 working days, after the payment of any fee. Those dealing with requests must do so promptly and not delay responding until the end of the 20 working day period if the information can reasonably be provided earlier.
- b. The IGCS aims to make all decisions within 20 working days, including those where it needs to consider where the public interest lies in respect of an application for exempt information.
- c. In those instances when it is not possible for the IGCS to deal with an application within 20 working days they must:
  - I. Give an estimate of the date by which they expect to reach such a decision.
  - II. Ensure that their estimates are realistic and reasonable in the circumstances of the particular case, taking account, for example, of the need to consult third parties where this is necessary
  - III. Comply with their estimates unless there are good reasons not to do so. If they exceed their estimate, they should apologise to the applicant and explain the reason(s) for the delay. If they find, while considering the public interest, that the estimate given is proving unrealistic, they must keep the applicant informed. They must keep a record of instances where estimates are exceeded, and where this happens more than occasionally, take steps to identify the problem and rectify it.

### 5.7. Fee Charging.

The Trust has discretion to charge applicants a fee in accordance with the Fees Regulations in respect of requests made under the general right of access. See

<http://www.justice.gov.uk/docs/foi-response-charging-fee.doc> \

Further details can be found in Appendix C.

### 5.8. Notification of Complaints Procedure.

When communicating any decision made in relation to a request under the Act's general right of access, the Trust is obliged to notify the applicant of their right of complaint. The IGCS will provide details of the complaints procedure, including how to make a complaint, and must inform the applicant of their right to complain to the Information Commissioner if they are still dissatisfied following the Trust's review.



## Code of Practice for Responding to Requests for Information

### 5.9. Refusal of Request.

Where the Trust relies on an exemption to refuse a request for information, IGCS must inform the applicant which exemption has been claimed, and why that exemption applies. It must not merely paraphrase the wording of the exemption. (Unless the statement would involve the disclosure of information which would itself be exempt information).

The Act also requires the Trust, when withholding information (other than under an "absolute" exemption), to state the reasons for claiming that the public interest test in maintaining the exemption outweighs the public interest test for disclosure.

The Trust must specify the public interest factors (for and against disclosure) that have been taken into account before reaching the decision. Further details on the exemptions that may be claimed under the Act are in Appendix D.

### 5.10. Contracts and 3rd Party Confidence.

The Trust should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of its functions and it would not otherwise be provided. In addition, the Trust should not agree to hold information received from third parties "in confidence" which is not confidential in nature. Acceptance of any confidentiality provisions must be for good reasons, capable of being justified to the Commissioner. Further details are given in Appendix D.

### 5.11. **Handling Requests for Information which "*appear to be part of an organised campaign*".**

The Trust is not required to comply with a number of related requests where the cumulative cost of complying with the requests would exceed the "appropriate limit" (i.e. cost threshold) prescribed in the MOJ Fees Regulations. In such cases the Trust must consider whether the information could be disclosed in another, more cost-effective, manner. For example, publication on the Trust's website, and a brief notification of the website reference to each applicant, might bring the cost within the appropriate limit.

## 6. Complaints Procedure

The complaints procedure may be used by any person who considers that the Trust is not complying with its Publication Scheme, or who wishes to complain about the handling or outcome of their request. Further details are in Appendix E.

## 7. Review of the Code of Practice

- 7.1. For monitoring purposes the Department for Information Governance, Caldicott & SIRO Support will keep a record of all applications. This will include applications where all or part of the requested information is withheld. In addition to a record of the numbers of applications involved where information is withheld, senior managers in the Trust need information on each case to determine whether cases are being properly considered, and whether the reasons for refusals are sound. The Department for Information Governance, Caldicott & SIRO Support will also keep a record of all complaints and of their outcome.
- 7.2. The Code of Practice and Procedures will be reviewed annually as part of the review of the main Policy. The review will also monitor appropriate statistics, complaints and procedures for dealing with requests for information.
- 7.3. The Department for Information Governance, Caldicott & SIRO Support will consider whether the Publication Scheme can be updated to include any material that is the subject of repeat requests

# Code of Practice for Responding to Requests for Information

## 8. Trust Contacts

- 8.1. Any enquiries about this Code of Practice or for more details on the Trust's Freedom of Information Policy and Model Publication Scheme should be directed to:

[Department for Information Governance, Caldicott & SIRO Support](#)  
Sheffield Teaching Hospitals NHS Foundation Trust,  
Weston Park Hospital  
Whitham Road,  
Sheffield. S10 2SJ  
Tel: 0114 226 5151, Fax: 0114 226 5152  
E-mail: [FOI@sth.nhs.uk](mailto:FOI@sth.nhs.uk)

- 8.2. In the first instance the contact for any complaints in relation to the Publication Scheme or a request for information should be directed to:

[The Information Governance, Caldicott & SIRO Support Manager](#)  
Department for Information Governance, Caldicott & SIRO Support  
Sheffield Teaching Hospitals NHS Foundation Trust  
Weston Park Hospital  
Whitham Road  
Sheffield. S10 2SJ  
Tel: 0114 226 5153 Fax: 0114 226 5152  
E-mail: [foi@sth.nhs.uk](mailto:foi@sth.nhs.uk)

- 8.3. Any complainant who considers that their complaint has not been satisfactorily dealt with should address their complaint in writing to the official regulator for the Freedom of Information Act

[Information Commissioner](#)  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF  
<http://www.ico.gov.uk/>

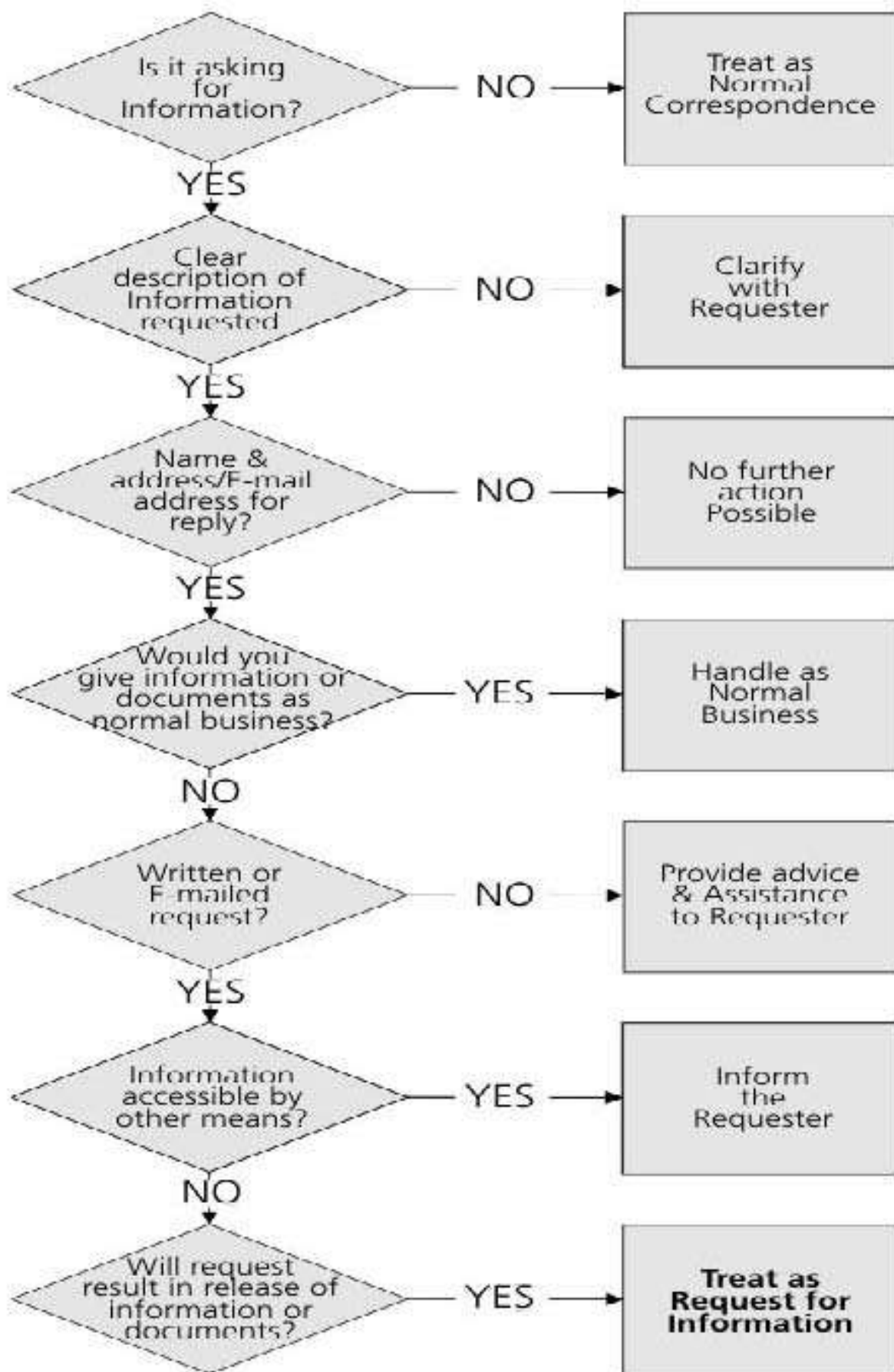
# Code of Practice for Responding to Requests for Information

## Appendix A - Assisting Applicants and Dealing with Requests

1. When a person is unable to submit a written request, the Department for Information Governance, Caldicott & SIRO Support will provide further assistance. Depending on the circumstances, appropriate assistance might include:
  - a. Advising the applicant who else might be able to assist them, for example Citizen's Advice Bureau or the Information Commissioners Office. In exceptional circumstances, offering to take a note of the application over the phone and then sending the note to the applicant for confirmation.
2. Where the request is vague or ambiguous the Trust is obliged, as far as practicable, to assist the applicant in clarifying the request. The purpose of this is to clarify the nature of the information sought, not to determine the aims or motivation of the applicant. This may include providing:
  - a. An outline of the different kinds of information which might meet the terms of the request;
  - b. A general response to the request setting out options for further information which could be provided on request;
  - c. Access to detailed catalogues and indexes, where available, to help the applicant ascertain the nature and extent of the information held by the authority;
- 3) If following the provision of such assistance, the applicant is still unable to describe the information requested in a way that would enable the Trust to identify and locate it; the Trust is not expected to seek further clarification. It is, however, required to disclose any information that has been successfully identified and explain to the applicant why it cannot take the request any further. It must also provide the applicant with details of the Trust's Complaints Procedure.
- 4) Where the applicant is not prepared to pay the appropriate fee, the Trust should nevertheless consider whether there is any information that may be of interest to the applicant that is available free of charge.
- 5) Where the Trust is not obliged to supply the information requested because the cost of doing so would exceed the "appropriate limit" (i.e. cost threshold), and where the Trust is not prepared to meet the additional costs itself, it should nevertheless provide an indication of what information could be provided within the cost ceiling.
- 6) The Trust is not expected to provide assistance to applicants whose requests are deemed vexatious within the meaning of the Act.

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## FOI Request for Information flow diagram



# Code of Practice for Responding to Requests for Information

## Appendix B Consultation with Third Parties

1. In some cases the disclosure of information pursuant to a request may affect the legal rights of a third party, for example where information is subject to the common law duty of confidence or where it constitutes "personal data" within the meaning of the DPA 1998. Members of staff must always remember that, unless an exemption provided for in either the DPA or the Freedom of Information Act applies in relation to any particular information, it will be obliged to disclose that information in response to a request.
2. In some cases, a disclosure of information cannot be made without the consent of a third party (for example, where information has been obtained from a third party and in the circumstances the disclosure of the information without their consent would constitute an actionable breach of confidence such that the exemption at Section 41 of the Act would apply). In such instances, members of staff must consult that third party with a view to seeking their consent to the disclosure unless such a consultation is not practicable (for example because the third party cannot be located or because the costs of consulting them would be disproportionate).
3. Where information constitutes "personal data" within the meaning of the DPA, staff must have regard to Section 40 of the Act which makes detailed provision for cases in which a request relates to such information and the interplay between the Act and the DPA in such cases.
4. Where the interests of the third party who may be affected by a disclosure do not give rise to legal rights, consultation may still be appropriate.
5. Consultation should take place where:
  - a. The views of the third party may assist the Trust to determine whether an exemption under the Act applies to the information requested; or
  - b. The views of the third party may assist the Trust to determine where the public interest lies under Section 2 of the Act.
6. Members of staff may consider that consultation is not appropriate where the cost of consulting with third parties would be disproportionate. In such cases, staff must consider taking a reasonable course of action in light of the requirements of the Act and the individual circumstances of the request.
7. Consultation will be unnecessary where:
  - a. The Trust does not intend to disclose the information relying on some other legitimate ground under the terms of the Act;
  - b. The views of the third party can have no effect on the decision of the authority, for example, where there is other legislation preventing or requiring the disclosure of this information;
  - c. No exemption applies and so, under the Act's provisions, the information must be provided.
8. Where the interests of a number of third parties may be affected by a disclosure and those parties have a representative organisation which can express views on behalf of those parties, the Trust may, if it considers consultation appropriate, consider that it would be sufficient to consult that representative organisation. If there is no representative organisation, the Trust may consider that it would be sufficient to consult a representative sample of the third parties in question.
9. The fact that the third party has not responded to consultation does not relieve the Trust of its duty to disclose information under the Act, or its duty to reply within the time specified in the Act.
10. In all cases, it is for the Trust, not the third party (or representative of the third party) to determine whether or not information should be disclosed under the Act. A refusal to consent to disclosure by a third party does not, in itself, mean information should be withheld.

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11. It is likely that many requests of this type will involve consultation with the NHS Trusts that the Trust has relationships with. In these cases the Trust may wish to ensure that a co-ordinated response is adopted to ensure that any exemptions are properly assessed.

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## Appendix C - Fee Regulations

1. In dealing with any request for information under the Act the Trust is able to charge fees in accordance with the Freedom of Information Fee Regulations.  
<http://www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners/fees>
2. The costs to be taken into account by the Trust when determining any fee to be charged are:
  - a. The prescribed costs, meaning any costs reasonably incurred by the Trust in determining whether it holds information of the description specified in the request, in locating and retrieving any such information and in giving effect to any preference expressed by the applicant as to the means of communication of such information, including the cost of associated staff time, but does not include the cost of staff time incurred in determining whether the Trust is obliged to comply with the request for information; and
  - b. The disbursements meaning any costs directly and reasonably incurred by the Trust in informing the applicant whether it holds information of the description specified in the request and in communicating any such information to him;
  - c. that would be incurred by the Trust in complying with the request for information to which the fee relates.

### Calculation of an Appropriate Fee

The Trust does not have to comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate limit which is £450 (based on the MOJ regulations of a notional cost of 18 hours work at £25.00p per hour).

3. Where the cost of complying with a request exceeds the appropriate limit then the Trust may still decide to comply with the request. In this case then the Trust shall follow one of the following arrangements:
  - a. provide the information at no charge.
  - b. charge the full cost.
  - c. charge the difference between the total cost and the appropriate limit.

### Aggregation of costs

4. Where two or more requests for information are made to the Trust and:
  - a. the two or more requests referred to in that section are for information which is on the same subject matter or is otherwise related;
  - b. the last of the requests is received by the Trust before the twentieth working day following the date of receipt of the first of the requests; and
  - c. it appears to the Trust that the requests have been made in an attempt to ensure that the prescribed costs of complying separately with each request would not exceed the appropriate limit.

then the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.

### Disbursements

5. The Trust will not charge for disbursements under £25.00.



# Code of Practice for Responding to Requests for Information

## Appendix D - Refusal of Requests

1. Some of the information held by the Trust may be regarded as exempt information i.e. it will not have to be provided in response to an individual request. There are 23 such exemptions and they relate to information held for a variety of functions. These include national security, law enforcement, commercial interests, and personal data. The IGCS will be responsible for deciding if an exemption is applicable.
2. Before relying on an exemption, the IGCS will usually be obliged to consider two further points. First, some of the exemptions can only be claimed if the release of the information would prejudice the purpose to which the exemption relates. Thus information held in connection with law enforcement can only be withheld if its release would, for example, prejudice the prevention or the detection of a crime. Secondly, some of the exemptions also require the IGCS to apply the "public interest" test before making a final decision as to whether or not to release the information. The public interest test requires the Trust to consider whether the public interest in withholding the exempt information outweighs the public interest in releasing it.
3. Most of the exemptions will require the IGCS to consider both the test of prejudice and the public interest test. However care must be taken to determine if a specific exemption can be relied upon. It should be noted that only the information to which an exemption applies would be withheld. Thus, if a particular document had been requested which contained some exempt information, only those specific items of exempt information could be withheld. The rest of the document would still have to be released.

## Contracts

4. When entering into contracts the Trust should refuse to include contractual terms which purport to restrict the disclosure of information held by the Trust and relating to the contract beyond the restrictions permitted by the Act. The Trust cannot "contract out" its obligations under the Act. Unless an exemption provided for under the Act is applicable in relation to any particular information, the Trust will be obliged to disclose that information in response to a request, regardless of the terms of any contract.
5. When entering into contracts with non-public authority contractors, the Trust may be under pressure to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance will be exempt from disclosure. The Trust should reject such clauses wherever possible. Where, exceptionally, it is necessary to include nondisclosure provisions in a contract, an option could be to agree with the contractor a schedule of the contract that clearly identifies information, which should not be disclosed. However, the Trust will need to take care when drawing up any such schedule, and be aware that any restrictions on disclosure provided for could potentially be overridden by its obligations under the Act, as described in the paragraph above.
6. In any event, the Trust should not agree to hold information 'in confidence' which is not in fact confidential in nature. It should be aware that the exemption provided for in the Act only applies if information has been obtained by the Trust from another person, and the disclosure of the information to the public, other than under the Act, would constitute a breach of confidence actionable by that, or any other, person.
7. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Commissioner.

## Code of Practice for Responding to Requests for Information

8. It is for the Trust to disclose information pursuant to the Act, and not the non-public authority contractor. However, the Trust may wish to protect from disclosure by the contractor, by appropriate contractual terms, information which it has provided to the contractor, which would clearly be exempt from disclosure under the Act, by appropriate contractual terms. In order to avoid unnecessary secrecy, any such constraints should be drawn as narrowly as possible, and according to the individual circumstances of the case. Apart from such cases, the Trust should not impose terms of secrecy on contractors.
9. The Act empowers the Secretary of State for Justice & Constitutional Affairs to designate, as public authorities for the purposes of the Act, persons (or bodies) who provide under a contract made with a public authority, any service whose provision is a function of that authority. Thus, some non-public authority contractors will be regarded as public authorities within the meaning of the Act, although only in respect of the services provided under the specified contract. As such, and to that extent, the contractor will be required to comply with the Act like any other public authority.

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## Appendix E - Complaints

### Description of Review Procedure

1. Under the Secretary of State for Constitutional Affairs Code of Practice on the discharge of public authorities' functions made under Section 45 of the FOI Act, each public body is required to have a means of dealing with those expressing dissatisfaction with the public authority's actions in response to a Request for Information (RFI). In line with the recommendations contained within Section 45, Sheffield Teaching Hospitals NHS Foundation Trust has in place a review procedure to be followed if a requester is dissatisfied with a response.
2. This review procedure is not part of the Trust's Patients complaints policy.

### Receipt of correspondence

3. Any written correspondence from an applicant (including one transmitted by electronic means) expressing dissatisfaction with the Trust's response to a valid request for information should be treated as a complaint, as should any written communication from a person who perceives the Trust is not complying with the current Publication Scheme methodology . These communications should be handled in accordance with the procedure outlined below, even if, in the case of a request for information under the general right of access, the applicant does not state his or her desire for the Trust to review its decision or its handling of the application.
4. In all cases, complaints should be acknowledged and the complainant should be informed of the Trust's target date for determining the complaint. Where it is apparent that determination of the complaint will take longer than the target time (for example because of the complexity of the particular case), staff must inform the applicant and explain the reason for the delay. The complainant should always be informed of the outcome of his or her complaint.
5. The Trust can set its own target times for dealing with complaints, but these must be reasonable, defensible, and subject to regular review. The Trust must publish its target times for determining complaints and information as to how successful it is with meeting those targets.

### Outcome

6. Where the outcome of a complaint is that information should be disclosed which was previously withheld, the information in question should be disclosed as soon as practicable and the applicant should be informed how soon this will be.
7. Where the outcome of a complaint is that the Trust's staff have not properly followed the procedures within the Trust, the Trust should apologise to the applicant. The Trust should also take appropriate steps to prevent similar errors occurring in future.
8. Where the outcome of a complaint is that an initial decision to withhold information is upheld, or is otherwise in the Trust's favour, the applicant should be informed of his or her right to apply to the Information Commissioner, and be given details of how to make an application, for a decision on whether the request for information has been dealt with in accordance with the requirements of the Act.

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## Stage 1

9. The IGCS will deal with any initial complaint in an informal manner. If a complaint cannot be dealt with satisfactorily on an informal basis, the Information Governance Manager will inform the complainant about the Trust's procedure for dealing with complaints about its actions in respect requests for information and in accordance with the MOJs Code of Practice under Section 45 of the Act and how he or she may contact the Information Commissioner if he or she wishes to do so. The Information Governance, Caldicott & SIRO Support Manager must also explain that although the complainant cannot apply to the Commissioner for a decision until the Trust's Review Procedure has been exhausted, the Commissioner might investigate the matter at his or her discretion.
10. All complaints at this stage must normally be dealt with promptly.

## Stage 2

11. Where the complaint concerns a request for information under the general right of access, a person who was not a party to the original decision, where this is practicable, should handle the review.
12. The Reviewer or the Review Team must respond to all complaints within 20 working days from the first working day after the complaint was received.
13. If the applicant is still not satisfied then they may pursue their complaint with the Information Commissioner.

## Footnote

<http://www.justice.gov.uk/guidance/foi-procedural-unhappy.htm>

# Code of Practice for Responding to Requests for Information

## Appendix F



### INITIAL EQUALITY IMPACT ASSESSMENT PROFORMA FOR POLICY

**POLICY:** [Code of Practice for Responding to Requests for Information](#)

**Equality Impact Assessment completed by:** Peter Wilson

**Date:** 06/02/18

#### Who has been consulted?

Department for Information Governance, Caldicott & SIRO Support, Trust SIRO,  
Information Security Manager, Information Governance Committee,  
Equality and Human Rights Manager STH

#### Describe the aims, objectives and purpose of the policy service being assessed:

To ensure the Trust has a full ratified code of practice which supports the Freedom of Information Policy and the Information Governance Management Framework (IGMF), with regards answering requests under the terms of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004

To ensure that the legal and contractual obligations of the legislation is clearly understood by all staff and that the requirements in such use are met.

This is further supported by the controls in v.11 2013/14 of the Information Governance Toolkit, the Trust Confidentiality – Staff Code of Conduct, The Mandated Procedures for the Transfer of Personal Identifiable Data (PID) and other Sensitive or Confidential Information, the Information Security Policy, the E-mail Policy, Information Risk Management Policy and the employees contract of employment.

#### Who is intended to benefit?

All employees

#### Does the policy have any differential impact on the following equality areas?

	Positive, Negative or Neutral Impact	Supporting evidence/data
Race/Ethnicity	Neutral	

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Gender (including pregnancy/ maternity and gender reassignment)	Neutral	
Disability	Neutral	
Religion or belief	Neutral	
Sexual orientation	Neutral	
Age	Neutral	
Dignity & Human Rights	Neutral	
Social Deprivation / Tackling Health Inequality	Neutral	

Please identify what further action is required e.g. collection of data, full impact assessment

Action	Timescale	Lead Person

**Approved by:**

**Date of review: 6th February 2021**